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19 January 1959

B. General Directives of Global and sub-global application.

1. Statutes and Presidential Directives

a. The National Security Act of 1947, as amended, established the National Security Council (NSC) and the Central Intelligence Agency (CIA). The Act provided that the CIA, under the direction of the NSC, for the purpose of coordinating the intelligence activities of the several Government departments and agencies in the interest of national security, should have the duty of correlating and evaluating intelligence relating to national security; of advising the NSC concerning such intelligence activities of the Government departments and agencies as relate to national security; and of making recommendations to the NSC for the coordination of such intelligence activities. In addition, this Act provided that the Agency shall (Section 102 (d)):

"(4) . . . perform, for the benefit of the existing intelligence agencies, such additional services of common concern as the National Security Council determines can be more efficiently accomplished centrally,

"(5) . . . perform such other functions and duties related to intelligence affecting the national security as the National Security Council may from time to time direct."

Section 102 (d)(4) is the legislative authority for NSCID No. 5 - U. S. Espionage and Counterintelligence Activities Abroad and Section 102 (d)(5) is the legislative authority for NSC 5412/2 - Covert Operations.

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B. 1. Statutes and Presidential Directives.

b. The Basic Policy Governing the Release of Classified Defense Information to Foreign Governments - promulgated by a presidential memorandum dated 23 September 1958. This directive supersedes the Presidential Directive dated 25 May 1953, subject: "Making Classified Information Available To Foreign Nationals" and those provisions of Executive Order 10501, dated 5 November 1953, which deal with the dissemination to and handling by foreign governments of classified defense information but does not affect the provisions of Executive Order 10501 which deal with the handling of such information within the U. S. Government. The directive is reproduced verbatim.

DIRECTIVE

BASIC POLICY GOVERNING THE RELEASE OF CLASSIFIED
DEFENSE INFORMATION TO FOREIGN GOVERNMENTS

It is essential to the defense interest of the United States that this Government closely cooperate with certain foreign governments to the extent of furnishing classified defense information, as defined in E. O. 10501*, to such governments. The protection of such information released to foreign governments is principally secured by the assurance of the receiving government that such information will be appropriately safeguarded within that government. To establish uniform procedures and to provide for the security of information so released, all departments and agencies shall be guided by the policy set forth herein.

A. FOR THE PURPOSE OF THIS POLICY, THE FOLLOWING DEFINITIONS ARE ADOPTED

1. MILITARY INFORMATION. Military information is information under the control or jurisdiction of the Department of Defense, its departments or agencies, or of primary interest to them.
2. ORIGINAL RECIPIENTS. Original recipients are considered as those representatives, civil or military, of a foreign government who, either individually or collectively, directly receive from the United States Government classified defense information being communicated or transmitted to their government.
3. SECURITY ASSURANCE. A security assurance is a certification by the receiving government stating in substance that its representatives, civil or military, have been specifically approved by that government to receive classified defense information from the United States Government.

* E. O. 10501 may be consulted in the Branch 1 Library, K Bldg. or obtained through the Library of Domestic Acquisitions, extension 8694.

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B. CLASSIFIED NON-MILITARY DEFENSE INFORMATION

Classified non-military defense information shall only be released to foreign governments upon compliance with the following conditions:

1. A determination is made by a responsible official of the releasing department or agency that the furnishing of classified defense information will result in a net advantage to the defense interests of the United States. In making such determination the following conditions must be met:
 - (a) Disclosure is consistent with the foreign policy of the United States toward the recipient nation.
 - (b) Disclosure is consistent with the policies of the United States Government with regard to the Atomic Energy Act of 1954 as amended or with regard to information for which special procedures for release have been or may hereafter be established by competent authority having statutory jurisdiction over the subject matter.
 - (c) Disclosure is consistent with the defense interests of the United States.
 - (d) Disclosure is limited to information necessary to the purpose for which disclosure is made.
2. Additionally, the recipient government must have agreed, either generally or in the particular case, to the following:
 - (a) The recipient government will not release the information to a third government without the approval of the United States.
 - (b) The recipient government will undertake to afford the information substantially the same degree of protection afforded it by the United States, including prosecution for unlawful disclosure.
 - (c) The recipient government will not use the information for other than the purpose given.

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- (d) The recipient government will, in the absence of or pursuant to the provisions of any existing agreement with the United States Government, respect any private rights such as patents, copy rights or trade secrets which are involved in the information.

The Head of any department or agency or senior United States representative in any foreign country or jurisdiction, or other responsible official when specifically designated by such officer, is authorized to waive the requirements set forth in B.2.(a), (b), and (c) above when deemed necessary, taking into account that the principal means of assuring that the information will be appropriately safeguarded within the receiving government has been thereby eliminated.

C. CLASSIFIED MILITARY DEFENSE INFORMATION

The release of classified military information, as defined in paragraph A.1. above, is governed by the "Basic Policy Governing the Disclosure of Classified Military Information to Foreign Governments" approved by the President on February 27, 1946, and annexed hereto*, and also in accordance with the provisions of Paragraphs D through F, inclusive, of this Directive.

D. SECURITY CHECKS AND SECURITY ASSURANCES AND NECESSARY WAIVERS THEREOF

A security assurance shall be required, or, in lieu thereof, an appropriate security check may be made, regarding all original recipients who receive classified defense information. The head of any department or agency or senior United States representative in any foreign country or jurisdiction, or other responsible person specifically designated by such officer, is authorized to waive this requirement regarding high-ranking foreign government civil or military representatives when deemed necessary.

E. RESULTS OF SECURITY CHECKS

The results of any security checks shall be made a matter of record in the releasing department or agency. Any derogatory information derived from such security checks shall be made available to the Central Intelligence Agency and, if the recipient checked is in or comes to the United States, to the Federal Bureau of Investigation.

F. INFORMATION ORIGINATING IN ANOTHER DEPARTMENT OR AGENCY

Except as otherwise provided by Section 102 of the National Security Act of July 26, 1947, c. 343, 61 Stat. 498, as amended, 50 U.S.C., sec. 403, classified defense information, including that pertaining to sources of

* cf. p. B-1 (6) following.

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intelligence and method of its acquisition, originated in another department or agency shall not be released to a foreign government without the consent of the originating department or agency.

G. APPLICABILITY TO AGREEMENTS MADE PURSUANT TO THE ATOMIC ENERGY ACT AND IMPLEMENTATIONS OF FEDERAL STATUTES

The requirements stated herein shall have no application to agreements for cooperation arranged pursuant to the provisions of the Atomic Energy Act of 1954, as amended. Nothing contained in any policy or requirement herein shall be construed to supersede or modify any policy or regulation promulgated pursuant to any Federal statute.

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B. 1.

c. The directive "Basic Policy Governing the Disclosure of Classified Military Information To Foreign Governments" was approved by the President, 27 February 1946. The directive is reproduced verbatim.

BASIC POLICY GOVERNING THE
DISCLOSURE OF CLASSIFIED MILITARY INFORMATION
TO FOREIGN GOVERNMENTS

(Approved by the President, February 27, 1946)

1. PURPOSE OF POLICY. This policy, recommended by the Joint Chiefs of Staff, and approved by the Secretaries of State, War and the Navy, shall serve as a guide, from the viewpoint of military security, in determining what military information, as defined below, which bears a military security classification may be disclosed to foreign governments. This policy supersedes all previous policies in conflict therewith (particularly that contained in Enclosure "A" of J. C. S. Memorandum of Policy No. 5).

2. DEFINITION OF TERMS.

a. "Military Information" as used herein refers to all information primarily under the control and jurisdiction of the United States armed forces, or of primary interest to them. It is subdivided into two principal categories:

(1) "Intelligence," as a category of military information, refers to matters alien to the United States. It comprises all military information about possible or actual enemies and possible or actual theaters of operation.

(2) "Information Pertaining to the United States", which excludes intelligence, is military information which pertains to the United States and to U. S. activities. It may be divided into:

(a) "Technical Information: shall be deemed to include: i. Information on weapons and equipment, including instructions on maintenance and operation and any descriptive matter on components. ii. Means of manufacture, techniques and processes of weapons and equipment. iii. Scientific technical information dealing with the various arts and sciences relating to weapons and equipment or having potential use in creating new weapons of war and military equipment. It further includes other technical information not directly connected to weapons and equipment (material objects) but is applicable to furtherance of war such as the art of healing of gun wounds, preventative sanitation, psychology, etc. Information of a

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strategic or tactical nature is specifically excluded from the meaning of this term. Military training and reference publications not primarily concerned with weapons, equipment and materials are not considered to fall upon the term "technical information."

(b) "Non-Technical Information" which includes all military information pertaining to the United States, excluding "technical information." It applies generally to such matters as composition, distribution, fighting quality, organization, tactical and supply methods, and Operations of United States armed forces, as well as military information on United States manpower, material, conversion statistics, economic and political conditions, military geography, topography, climatic conditions and other subjects.

b. "Disclosure to a Foreign Government," as used herein, means the conveying by approved channels of classified military information to authorized representatives of a foreign government, also to foreign nationals, corporations, firms, associations or other private interests.

c. "Final Decision" as used herein means the ultimate authority, short of the President, to make determinations on a given subject, and to establish procedures by which such determinations shall be made. It does not imply that specific authorization in the case of each individual disclosure is required, unless that procedure is established.

3. GENERAL PRINCIPLES. Classified military information shall not be disclosed to foreign governments unless all of the following conditions are met:

a. Disclosure is consistent with the policy of the United States Government with regard to atomic energy and similar or related information for which special machinery for release has been or may hereafter be established.

b. Disclosure is consistent with the foreign policy of the United States toward the recipient nation. The final decision in this respect rests with the Secretary of State.

c. The military security of the United States permits disclosure. The final decision in this respect rests with the Secretaries of War and the Navy.

d. Disclosure is limited to the information necessary to accomplish the purpose for which disclosure is made.

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e. Disclosure will result in benefits to the United States equivalent to the value of the information disclosed. Typical benefits may be one of the following:

(1) The United States obtains information from the recipient nation on a quid pro quo basis.

(2) Exchange of military information or participation in a joint project will be advantageous to the U.S. from a technical or other military viewpoint.

(3) The U. S. military policy for the defense of the Western Hemisphere will be furthered.

(4) The development or maintenance of a high level of military strength and effectiveness on the part of the government receiving the information will be advantageous to the United States.

The final decision as to the value of military information and the relative military benefits to be derived from its disclosure rests with the Secretary of War or the Secretary of the Navy, in matters of interest to his Department alone; with the Secretaries of War and the Navy acting jointly, on the advice of the Joint Chiefs of Staff, in matters of joint interest, using, when indicated, appropriate joint agencies such as the Aeronautical Board.

4. INFORMATION NOT USUALLY DISCLOSABLE. Classified military information derogatory to the United States Government or any agency thereof, or prejudicial to U.S. relations with a foreign government with which the United States maintains friendly relations, or containing obvious indications of animosity or prejudice, is not to be disclosed to a foreign government without authorization by the Secretaries of State, War, and the Navy.

Neither the source of intelligence nor its method of acquisition will be disclosed to a foreign government without specific authorization from the department or agency by which the intelligence was obtained.

5. SECURITY AFFORDED BY RECIPIENT. Disclosure of classified military information to a foreign government should ordinarily be contingent upon an agreement by the recipient to afford to the information substantially the same degree of security afforded by the United States. In addition military information classified as "Secret" or "Top Secret" should not normally be disclosed to a foreign government unless there are compelling reasons for disclosure and unless there is satisfactory assurance that the security actually afforded to it will be substantially as great as that afforded by the United States.

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6. REVIEW OF SECURITY CLASSIFICATION. Under Army and Navy regulations it is the obligation of all authorities to keep classified matter constantly under review and to downgrade or declassify it as soon as conditions permit.

7. INTERSERVICE LIAISON. Close liaison with reference to the disclosure of military information to foreign governments shall be maintained between the State, War and Navy Departments and the Joint Chiefs of Staff, and among the subdivisions thereof which have cognizance of matters affected by such disclosure or related closely thereto.

8. CHANNEL FOR DISCLOSURE AND AVOIDANCE OF INADVERTENT DISCLOSURE. The disclosure of military information to a foreign government shall take place only through channels approved for that purpose by the Secretaries of State, War and the Navy. In making an authorized disclosure the precautions laid down in the applicable security regulations against disclosure or compromise of military information must so far as practicable be maintained against the inadvertent disclosure in some manner of classified military information not intended to be disclosed to the nation in question (or to any representative of it).

9. TIMING OF DISCLOSURE OF INFORMATION. Because of the extremely important nature of war-making weapons and devices, the practice of exchanging information should follow rather than precede collaborative arrangements and demonstrations of good faith in related fields.

10. PROTECTION OF PRIVATE RIGHTS. Decisions as to the disclosure of classified military information to foreign governments and their nationals should be made exclusively on military and political grounds. Classified military information should not be withheld for purely commercial reasons. When private rights, either in patents or in trade secrets are involved, however, consideration should be given to the equitable protection of such rights in the countries to which disclosure is to be made.

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B. 1.

d. Executive Order 10501 - Safeguarding Official Information in the Interests of the Defense of the United States - was approved by the President 5 November 1953. The provisions of Executive Order 10501 which apply to the dissemination of classified defense information to or its handling by a foreign government have been superseded by the "Basic Policy Governing The Release of Classified Defense Information To Foreign Governments" [cf. page B-1 (2)].

(1) Sub-paragraphs 7(b) and 7(c) of E.O. 10501, governing the dissemination of classified defense information within the U. S. Government, are reproduced verbatim. Sub-paragraph 7(c) is often referred to as "the third agency rule." The balance of the Executive Order has been omitted as not constituting policy.

(a) "Dissemination Outside the Executive Branch: Classified defense information shall not be disseminated outside the executive branch except under conditions and through channels authorized by the head of the disseminating department or agency, even though the person or agency to which dissemination of such information is proposed to be made may have been solely or partly responsible for its production.

(b) "Information Originating in Another Department or Agency: Except as otherwise provided by section 102 of the National Security Act of July 26, 1947, c. 343, 61 Stat. 498, as amended 50 U.S.C. sec. 403, classified defense information originating in another department or agency shall not be disseminated outside the receiving department or agency without the consent of the originating department or agency. Documents and material containing defense information which are classified Top Secret or Secret shall not be reproduced without the consent of the originating department or agency."

(2) Executive Order 10501 may be consulted in the Branch 1 Library K Building (extension 8023) or a copy obtained through the Library of Domestic Acquisitions (extension 8694).

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B. 1. Statutes, Presidential Directives and Executive Orders.

e. Executive Order 10656 - Establishing the President's Board of Consultants on Foreign Intelligence Activities - approved 6 February 1956.

(1) Sections 1 through 4 of E. O. 10656 are reproduced verbatim. Sections 5 and 6, which do not constitute policy, have been omitted.

(a) Section 1. There is hereby established the President's Board of Consultants on Foreign Intelligence Activities, hereinafter referred to as the President's Board. The members of the President's Board shall be appointed by the President, from among persons outside the Government and on the basis of ability, experience, and knowledge of matters relating to the national defense and security, and shall serve without compensation, but may receive transportation and per-diem allowances as authorized by law for persons serving without compensation.

(b) Section 2. The President's Board shall conduct an objective review of the foreign intelligence activities of the Government and of the performance of the functions of the Central Intelligence Agency and shall report its findings to the President semi-annually or at more frequent intervals as the President's Board may deem appropriate. Such reports shall embrace the quality of the foreign intelligence provided to the Executive Branch of the Government, the performance by the Central Intelligence Agency of its functions, the performance of their respective foreign intelligence functions by the principal intelligence elements of executive departments and other agencies, and any other related foreign intelligence matter which the President's Board deems appropriate.

(c) Section 3. The members of the President's Board, individually and sitting as the President's Board, shall consult from time to time with the Director of Central Intelligence concerning the activities of the Central Intelligence Agency and with intelligence elements of other departments and agencies. The Director of Central Intelligence and the intelligence elements concerned are authorized to make available to the President's Board or to its individual members any information concerning foreign intelligence

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activities relating to the national interest which the President's Board or its members may require to fulfill their responsibilities to the President under this order.

(d) Section 4. Each member of the President's Board shall execute an undertaking not to reveal any classified information obtained by virtue of his service on the President's Board except to the President or to such persons as the President may designate.

(2) Executive Order 10656 may be consulted in the Law Library, East Building. It will be found in the 1956 Supplement of CFR, Title 3.

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B. 1. Statutes, Presidential Directives and Executive Orders.

f. Executive Order 10700 - Further Providing for the Operations Coordinating Board - approved 25 February 1957. Supersedes E. O. 10483.

(1) Sections 1, 2, and 5 of E. O. 10700 are reproduced verbatim. Other sections have been omitted as not constituting policy.

Section 1. (a) In order to assist in the effective coordination among certain agencies of certain functions relating to the national security and to provide for the integrated implementation of national security policies by the said agencies, there is hereby established within the structure of the National Security Council the Operations Coordinating Board, hereinafter referred to as the Board, which shall report to the National Security Council.

(b) The Board shall have as members the following: (1) the Under Secretary of State, who shall represent the Secretary of State, (2) the Deputy Secretary of Defense, who shall represent the Secretary of Defense, (3) the Director of Central Intelligence, (4) the Director of the United States Information Agency, (5) the Director of the International Cooperation Administration, and (6) one or more representatives of the President to be designated by the President. The Board shall have a chairman and a vice chairman, each of whom shall be designated by the President from among its members. Each head of agency referred to in items 1 to 5, inclusive, in this subsection may provide for an alternate member who shall serve as a member of the Board in lieu of the regular member representing the agency concerned whenever such regular member is, for reasons beyond his control, unable to attend any meeting of the Board.

(c) The head of any agency (other than any agency represented under section 1(b) hereof) to which the President from time to time assigns responsibilities for the implementation of national security policies shall assign a representative to serve on the Board when the Board is dealing with subjects bearing directly upon the responsibilities of such head. Each such representative shall be an Under Secretary or corresponding official. Each such head may provide for an alternate representative of his agency who shall attend any meeting of the Board, requiring

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representation of such agency, in lieu of the representative when the latter is, for reasons beyond his control, unable to attend.

(d) Any alternate member of the Board serving under section 1(b) of this order, and any representative or alternate representative serving under section 1(c) of this order, shall, while so serving, have in all respects the same status on the Board as the members of the Board provided for in section 1(b) hereof.

Section 2. The President having approved any national security policy after receiving the advice of the National Security Council thereon, the Board shall (1) whenever the President shall hereafter so direct, advise with the agencies concerned as to (a) their detailed operational planning responsibilities respecting such policy, (b) the coordination of the interdepartmental aspects of the detailed operational plans developed by the agencies to carry out such policy, (c) the timely and coordinated execution of such policy and plans, and (d) the execution of each security action or project so that it shall make its full contribution to the attainment of national security objectives and to the particular climate of opinion the United States is seeking to achieve in the world, and (2) initiate new proposals for action within the framework of national security policies in response to opportunity and changes in the situation. The Board shall perform such other advisory functions as the President may assign to it and shall from time to time make reports to the National Security Council with respect to the carrying out of this order.

Section 5. Nothing in this order shall be construed either to confer upon the Board any function with respect to internal security or to abrogate or restrict in any manner any function vested by law in, or assigned pursuant to law to, any agency or head of agency (including the Office of Defense Mobilization and the Director of the Office of Defense Mobilization).

(2) Executive Order 10700 may be consulted in the Law Library, East Building. It will be found in the 1957 Supplement of CFR, title 3.